



August 27, 2014

**ADVANCE NOTICE OF INTENT TO FILE EMERGENCY REGULATIONS
TITLE 10. INVESTMENT
CHAPTER 12. CALIFORNIA HEALTH BENEFIT EXCHANGE
ARTICLE 4. GENERAL PROVISIONS**

This notice is sent in accordance with Government Code Section 11346.1(a)(2), which requires that State of California agencies give a five working day advance notice of intent to file emergency regulations with the Office of Administrative Law (OAL). The California Health Benefit Exchange ("Exchange") intends to file an Emergency Rulemaking package with the Office of Administrative Law (OAL) that establishes the identity proofing process for the individual Exchange. As required by subdivisions (a)(2) and (b)(2) of Government Code Section 11346.1, this notice appends the following: (1) the specific language of the proposed regulation and (2) the Finding of Emergency, including specific facts demonstrating the need for immediate action, the authority and reference citations, the informative digest and policy statement overview, attached reports, and required determinations.

The Exchange plans to file the Emergency Rulemaking package with OAL at least five working days from the date of this notice. If you would like to make comments on the Finding of Emergency or the proposed regulations (also enclosed), they must be received by both the Exchange and the Office of Administrative Law within five calendar days after OAL posts the filing on its website. Responding to these comments is strictly at the Exchange's discretion.

Comments should be sent simultaneously to:

California Health Benefit Exchange
Attn: Tessa Hammer
1601 Exposition Blvd
Sacramento, CA 95815

Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

Upon filing, OAL will have ten (10) calendar days within which to review and make a decision on the proposed emergency rule. If approved, OAL will file the regulations with the Secretary of State, and the emergency regulations will become effective for two years. Please note that this advance notice and comment period is not intended to replace the public's ability to comment once the emergency regulations are approved. The Exchange will hold a public hearing and 45-day comment period after it has published Notice to make these regulations permanent.

You may also view the proposed regulatory language and Finding of Emergency on the Exchange's website at the following address:

<http://hbex.coveredca.com/regulations/>

If you have any questions concerning this Advance Notice, please contact Tessa Hammer at (916) 228-8232.

FINDING OF EMERGENCY

The Director of the California Health Benefit Exchange finds that an emergency exists and that this proposed emergency regulation is necessary to address a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.

DEEMED EMERGENCY

The Exchange may “[a]dopt rules and regulations, as necessary. Until January 1, 2016, any necessary rules and regulations may be adopted as emergency regulations in accordance with the Administrative Procedures Act. The adoption of these regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare” (Gov. Code § 100504(a)(6)).

AUTHORITY AND REFERENCE

AUTHORITY: Gov’t Code §§ 100504(a)(6).

REFERENCE: Gov’t Code § 100503(a), (h) and (s).

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Documents to be incorporated by reference:

None.

Summary of Existing Laws

Under the federal Patient Protection and Affordable Care Act (PPACA), each state is required, by January 1, 2014, to establish an American Health Benefit Exchange that makes available qualified health plans to qualified individuals and small employers. Existing state law, the California Patient Protection and Affordable Care Act, established the California Health Benefit Exchange within state government. (Gov. Code § 100500 et seq.) The Exchange is required to establish the criteria and process for eligibility determination, enrollment, and disenrollment of enrollees and potential enrollees in California, provide for the processing of applications and the enrollment and disenrollment of enrollees, and exercise all powers reasonably necessary to carry out and comply with the duties, responsibilities, and requirements of the government code and the federal act. (Gov. Code § § 100503(a)(h)(s))

The Exchange currently provides rigorous system features and procedures to ensure that individuals who apply for coverage or who provide enrollment assistance are who they purport to be. However, for continued use of the federal data services hub for verification of income and social security data, CMS Guidance Regarding Identity Proofing for the Marketplace, Medicaid, and CHIP, and the Disclosure of Certain Data

Obtained through the Data Services Hub (June 11, 2013) requires state exchanges to establish remote identity verification procedures for consumers who apply online and over the phone. The proposed regulations will integrate the federal remote identity verification service for consumers who apply online or over the phone as required. The proposed regulation will provide the public with clear standards for identity verification, including the processes that will be used for paper and non-paper (i.e., electronic or telephonic) applications. These regulations allow the Exchange to continue using the federal data services hub by complying with existing federal guidance.

After an evaluation of current regulations, the Exchange has determined that these proposed regulations are the only regulations that concern identity proofing.

MATTERS PRESCRIBED BY STATUTE APPLICABLE TO THE AGENCY OR TO ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS

None

LOCAL MANDATE

The Executive Director of the California Health Benefit Exchange has determined that this proposed regulatory action does not impose a mandate on local agencies or school districts.

FISCAL IMPACT ESTIMATES (Attached Form 399)

This proposal does not impose costs on any local agency or school district for which reimbursement would be required pursuant to Section 7 (commencing with Section 17500) of Division 4 of the Government Code. This proposal does not impose other nondiscretionary cost or savings on local agencies.

COSTS OR SAVINGS TO STATE AGENCIES AND TO FEDERAL FUNDING (Attached Form 399)

The proposal results in additional costs to the California Health Benefit Exchange, which is currently funded by federal grant money and will become financially self-sufficient in 2015. The proposal may result in additional costs to the Department of Health Care Services.

§ 6464. Identity Verification Requirement.

- (a) Definitions. For purposes of this section, the following terms shall have the following meanings:
 - (1) RIDP: Remote Identity Proofing service;
 - (2) FDSH: Federal Data Service Hub;
 - (3) Certified Representative:
 - (A) Service Center Representative: an Exchange employee operating in a call center as set forth in 45 C.F.R. section 155.205 (a);
 - (B) Certified Enrollment Counselor as defined in section 6650;
 - (C) Certified Application Counselor as defined in 45 C.F.R. section 155.225;
 - (D) Certified Insurance Agent as defined in section 6800;
 - (E) Certified Plan-Based Enroller as defined in section 6410.
- (b) Paper Applications
 - (1) The Exchange shall accept only paper applications for health insurance coverage that are accompanied by a signature in ink, under penalty of perjury in the declaration and signature section of the Exchange's paper application as defined in section 6470.
 - (2) The Exchange shall not accept or process any paper application lacking an attestation of identity signed by the applicant in ink under penalty of perjury.
- (c) Non-paper applications
 - (1) Prior to initiating an application as set forth in section 6470, an applicant must consent to having his or her identity verified in one of the following ways:
 - (A) If the applicant applies through CalHEERS without the assistance of a Certified Representative, the applicant shall consent by clicking the "Yes" button on the CalHEERS Screen in response to being asked, "Do you give your permission to Covered California to confirm your identity?"
 - (B) If the applicant applies through CalHEERS with the assistance of a Certified Representative, he or she shall provide this consent to the Certified Representative orally. The Certified Representative shall attest to having received this consent from the applicant in one of the following ways:
 - 1. Clicking the "Yes" button next to the statement "I attest that I have visually verified this person's identity";
 - 2. Clicking the "Yes" button next to the statement "I have the consumer's consent to access their identity information through the Federal Data Services Hub Remote Identity Proofing service."
 - (2) Prior to initiating an application as set forth in section 6470, an applicant shall submit his or her identity for verification using one of the following methods:
 - (A) Visual Verification
 - 1. An applicant shall mail, present in person, or electronically transmit through CalHEERS to the Exchange or to a Certified Representative acceptable proof of identity as follows:
 - (i) A copy of a valid identification card issued by a federal, state, or local governmental entity that bears a recognizable photograph of the applicant or other identifying information of the individual such as name, age, sex, race, height, weight, eye color, or address, including school identification card, voter registration card, Military Dependent's identification card, Native American Tribal document, U.S. Coast Guard Merchant Mariner card, or
 - (ii) Two of the following: a birth certificate, Social Security card, marriage certificate, divorce decree, employer identification card, high school or

college diploma (including high school equivalency diplomas), property deed or title.

2. If submitted in person or by mail, a Certified Representative shall upload a copy of the identity documents to CalHEERS.

(B) Federal Data Service Hub Remote Identity Proofing service

1. If the applicant does not elect to have his or her identity verified pursuant to subdivision (c)(2)(A), he or she shall consent to allowing the Exchange or Certified Representative to use the FDSH RIDP service to access his or her identity information.

2. The applicant shall answer a number of questions generated by the FDSH RIDP service. Examples of these questions include, but are not limited to:

(i) Please select the number of bedrooms in your home from the following choices. If the number of bedrooms in your home is not one of the choices please select 'NONE OF THE ABOVE.'

(ii) Please select the county for the address you provided.

(iii) Please select the range that includes the year the home was built for the address that you provided.

3. Based on the accuracy of the applicant's answers to the questions referenced in (c)(2)(B)2. of this section the FDSH RIDP service will either verify the applicant's identity or provide information on how to complete an alternative identity verification process.

(3) If the Exchange is unable to verify the identity of an applicant in accordance with subdivision (c)(2) of this section, neither the Exchange nor a Certified Representative shall accept an application for health insurance from that same applicant until one of the following is satisfied:

(A) The applicant successfully completes the alternative identity verification process by calling the Experian Help Desk number listed in CalHEERS and successfully answers additional personalized questions, and the FDSH RIDP service informs the Exchange or Certified Representative of such;

(B) The applicant completes the visual verification process as set forth in (c)(2)(A) of this section; or

(C) The applicant submits a paper application in accordance with subdivision (b) of this section.

(d) An applicant who successfully completes the identity verification requirements set forth in this section may, if otherwise permitted, apply for health insurance for himself or herself and for members of his or her household, without those household members also satisfying the requirements set forth in this section.

(e) Consumers who submitted an application prior to the effective date of this section are subject to the requirements of this section if they make a change to the Primary Contact screen.

(f) This section shall not apply to individuals applying through SHOP (section 6540 et seq).

AUTHORITY: Gov't Code § 100504(a)(6).

REFERENCE: Gov't Code §§ 100503(a), (h) and (s).